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PROVO CRAFT AND NOVELTY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
[DIVISION TO BE ASSIGNED]

PROVO CRAFT AND NOVELTY, INC., a
Utah corporation,

Plaintiff,

v.

CRAFT EDGE INC., a California corporation;
and BRANDON KURODA, an individual,

Defendants.

Civil Action No. **CV 11 0297**

COMPLAINT FOR:

- 1. COPYRIGHT INFRINGEMENT;**
- 2. TRADEMARK INFRINGEMENT UNDER § 32 OF THE LANHAM ACT;**
- 3. TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, PASSING OFF, AND UNFAIR COMPETITION UNDER § 43(a) OF THE LANHAM ACT; AND**
- 4. BREACH OF CONTRACT**

AND

DEMAND FOR JURY TRIAL

1 Plaintiff Provo Craft and Novelty, Inc. ("Provo Craft" or "Plaintiff"), by its attorneys,
2 brings this Complaint against Defendants Craft Edge Inc. ("Craft Edge") and Brandon Kuroda
3 ("Kuroda") (collectively, "Defendants") as follows:

4 NATURE OF THE SUIT

5
6 1. Defendants have illegally enriched themselves at Plaintiff's expense by unauthorized use
7 of Provo Craft's copyrighted CRICUT DESIGNSTUDIO® software and Provo Craft's registered
8 CRICUT® trademarks. Accordingly, Provo Craft brings this action for injunctive relief and
9 damages arising from (i) Defendants' unlawful acts of copyright infringement, in violation of the
10 Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. and, in particular, § 501 ("the
11 Copyright Act"); (ii) Defendants' trademark infringement, false designation of origin, passing off
12 and unfair competition, in violation of the Lanham Act, 15 U.S.C. §§1051 et seq.; and (iii)
13 Defendants' breach of contract.
14

15 PARTIES

16 2. Plaintiff Provo Craft is a Utah corporation with a principal place of business located at
17 10876 South River Front Parkway, Suite 600, South Jordan, Utah, 84095.
18

19 3. Upon information and belief, Defendant Craft Edge is a California corporation with a
20 mailing address in California at 20505 Yorba Linda Blvd #112, Yorba Linda, CA 92886.

21 4. Upon information and belief, Defendant Kuroda is an individual with a residence at 20055
22 Paseo Luis, Yorba Linda, CA 92886-5702.

23 5. Upon information and belief, Defendant Kuroda formed and registered Defendant Craft
24 Edge shortly after he became aware of Provo Craft's CRICUT DESIGNSTUDIO® software and
25 did so for the purpose of conducting the unlawful conduct alleged in this Complaint. In particular,
26 Defendant Kuroda created Defendant Craft Edge for the purpose of introducing a parasitical
27 competing product in the marketplace, one that was made possible by unlawful access to and use
28

1 of Provo Craft's confidential and copyright-protected computer programs and related intellectual
2 property.

3 6. Upon information and belief, Defendant Kuroda is the President, sole member and
4 proprietor, and primary decision maker of Defendant Craft Edge.

5 7. Upon information and belief, Defendant Craft Edge does not have a place of business
6 separate from Defendant Kuroda's home.

7 8. Upon information and belief, Defendant Craft Edge does not have a retail space.

8 9. Upon information and belief, Defendant Craft Edge does not have a phone number.

9 10. Upon information and belief, there is a unity of interest and ownership between Defendant
10 Craft Edge and Defendant Kuroda such that the separate personalities of Defendant Craft Edge
11 and Defendant Kuroda do not in reality exist.

12 11. Upon information and belief, Defendant Craft Edge is a mere shell or conduit for
13 Defendant Kuroda's activities and affairs, including the unlawful conduct alleged herein.

14 12. Upon information and belief, Defendant Craft Edge is not adequately capitalized to meet
15 predictable obligations, including paying a judgment for copyright infringement, breach of
16 contract, and trademark infringement.

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19 **JURISDICTION AND VENUE**

20 13. Count I arises under a federal statute, 17 U.S.C. §§ 101 et seq. (the Copyright Act). This
21 Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

22 14. Counts II-III arise under a federal statute, 15 U.S.C. §§1051 et seq. (the Lanham Act).
23 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. §
24 1121.

25 15. Count IV for breach of contract arises under the laws of California. This Court has
26 supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) because it is so related to the federal
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28

1 claims that it forms part of the same case or controversy and derives from a common nucleus of
2 operative fact.

3 16. This Court has personal jurisdiction over Defendants. Defendants solicit, transact and do
4 business within this judicial district. In addition, according to the End User's License Agreement
5 ("EULA") at issue in this case, Defendants have agreed that any dispute arising under or relating
6 to the EULA shall be submitted to the exclusive jurisdiction of the state and federal courts in San
7 Francisco, California.
8

9 17. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400. Venue is also
10 proper because Defendants are subject to personal jurisdiction in this district. In addition, by
11 agreeing to the EULA, Defendants agreed to waive all objections to venue.
12

13 **INTRADISTRICT ASSIGNMENT**

14 18. Because this action is an Intellectual Property Action as specified in Civil L.R. 3-2(c), it is
15 to be assigned on a district-wide basis.

16 **BACKGROUND ALLEGATIONS**

17 19. Provo Craft is an innovative maker of consumer craft products that are used in personal
18 craft projects.

19 20. The great market success of Provo Craft's CRICUT® personal electronic cutting machines
20 (or "e-cutters") and related content cartridges and consumables has made Provo Craft one of the
21 leading companies in its industry. When Provo Craft introduced the CRICUT® e-cutter in 2005,
22 it was the first affordable, user-friendly and standalone (no computer required) personal electronic
23 cutting machine. By accessing one or more CRICUT® content cartridges connected to a CRICUT
24 machine, users can select fonts, then select, size, arrange and cut paper or vinyl letters and
25 designs. This can be done using just the keyboard and display on each CRICUT® e-cutter. An
26 image of a CRICUT® e-cutter appears below:
27
28



21. Provo Craft now sells three (3) different models of CRICUT® e-cutters, as well as the CRICUT CAKE™ and CRICUT IMAGINE™ machines. The former is used to cut gum paste and similar materials for use in decorating cakes and cookies. The latter is the first combined personal e-cutter and inkjet printer in one machine.

22. Provo Craft has developed and now sells well over 100 different CRICUT® cartridges that supply a vast pool of content for users to create and cut projects with their CRICUT e-cutters. These cartridges plug into the CRICUT® e-cutters. Each CRICUT® cartridge contains computer programs that control the CRICUT® e-cutter and store, manage, translate and deliver the letter and design content on each cartridge.

23. As shown in the picture in Paragraph 20 above, a user plugs a CRICUT® cartridge into the front right part of the CRICUT® e-cutter. An image of a typical CRICUT® cartridge appears below:

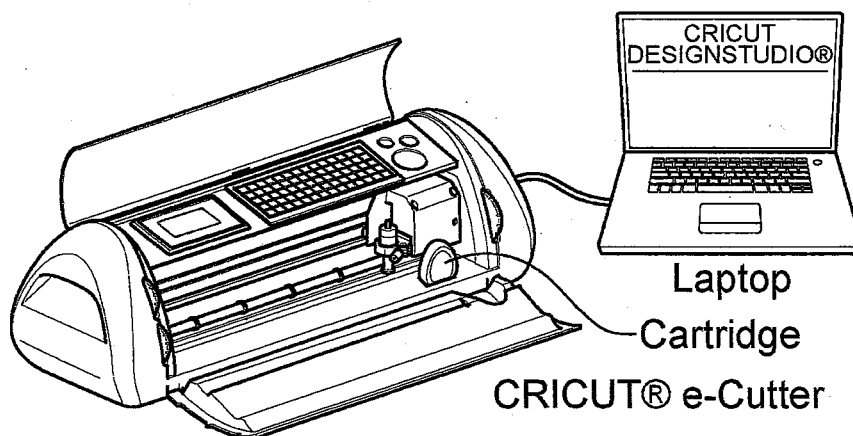


24. The CRICUT® e-cutters cut a variety of materials with or without a computer. Consumers use the cut patterns for scrapbooks, greeting cards, cake decorations, and a variety of other applications.

25. Provo Craft also owns and sells a personal computer software application program called CRICUT DESIGNSTUDIO® that allows people to view, manage, and manipulate all of the content that Provo Craft offers on its CRICUT® cartridges. Consumers can purchase licenses to use CRICUT DESIGNSTUDIO®, then either download the software via the internet, or access the software on CD-ROM discs. The software is then installed on the licensee's personal computer.

26. CRICUT DESIGNSTUDIO® transmits instructions via Universal Serial Bus (“USB”) from the computer running CRICUT DESIGNSTUDIO® to the CRICUT® e-cutter. CRICUT DESIGNSTUDIO® prepares the instructions to control the CRICUT® e-cutter which “instructs” the CRICUT® e-cutter how to cut a particular pattern or shape.

27. Provo Craft uses security features such that consumers can cut a pattern from CRICUT DESIGNSTUDIO® only if the applicable cartridge – presumably one that they own – is plugged into the CRICUT® e-cutter, as illustrated below.



28. Provo Craft uses various techniques to encrypt and obscure the USB communications between CRICUT DESIGNSTUDIO® and the CRICUT® e-cutter, in order to protect Provo

1 Craft's proprietary software and firmware, and to prevent attempts to intercept the cutting
2 commands.

3 29. The use of CRICUT DESIGNSTUDIO® software by end users is governed by an end user
4 license agreement ("EULA"). See End User License Agreement (attached hereto as Ex. A).

5 30. After purchasing but before using CRICUT DESIGNSTUDIO®, end users must read and
6 agree to be bound by the terms of the EULA. (Ex. A).

7 31. The EULA grants the end user a "non-exclusive right and license to use" CRICUT
8 DESIGNSTUDIO® and related documentation. (Ex. A at ¶ 1).

9 32. The EULA further provides that "[t]he Software contains copyrighted material, trade
10 secrets and other proprietary intellectual property." (Ex. A at ¶ 2). The EULA expressly forbids
11 concurrent use of the software unless each user has an applicable license and agrees to the terms of
12 the EULA. (Ex. A at ¶ 2).

13 33. The EULA also provides: "You may not decompile, disassemble, reverse-engineer or
14 otherwise display the Software in human-readable form. You may not modify, translate, rent,
15 lease, distribute or lend the Software, and you may not sell to others the right to use the Software
16 on your computer. You may not remove any proprietary notices or labels on the Software. You
17 may not copy, transfer, transmit, sublicense or assign this license or the Software except as
18 expressly permitted in this Agreement." (Ex. A at ¶ 2).

19 34. Provo Craft began selling CRICUT DESIGNSTUDIO® in November 2007. Some time
20 after the release of CRICUT DESIGNSTUDIO®, Defendants began offering and selling a
21 computer software program known as Sure Cuts A Lot™ ("SCAL"). SCAL sends control
22 commands to the CRICUT® e-cutter using the same protocol used by CRICUT
23 DESIGNSTUDIO® and encrypted using the same encryption that CRICUT DESIGNSTUDIO®
24 uses.
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1 35. An updated version of CRICUT DESIGNSTUDIO® was released in March 2008. Shortly
2 after this, Defendants produced and released an updated version of SCAL.

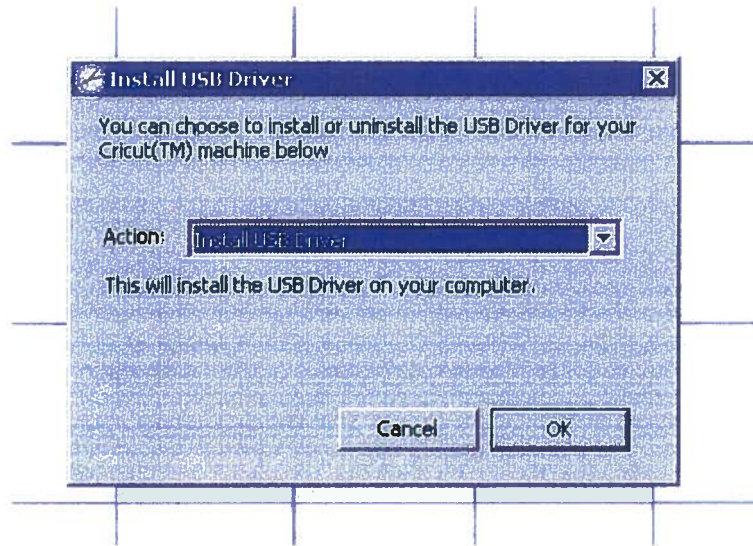
3 36. Upon information and belief, when Defendants or someone acting on Defendants' behalf
4 obtained each version of CRICUT DESIGNSTUDIO®, it agreed to the terms of the EULA.

5 37. Upon information and belief, Defendants, or a person acting on Defendants' behalf and
6 under Defendants' instructions and control, willfully and knowingly violated the EULA by, inter
7 alia, decompiling, disassembling, reverse-engineering or otherwise displaying in human-readable
8 form the CRICUT DESIGNSTUDIO® software that runs on a user's personal computer.
9 Defendants did this in order to gain knowledge of Provo Craft's CRICUT®-related protocol and

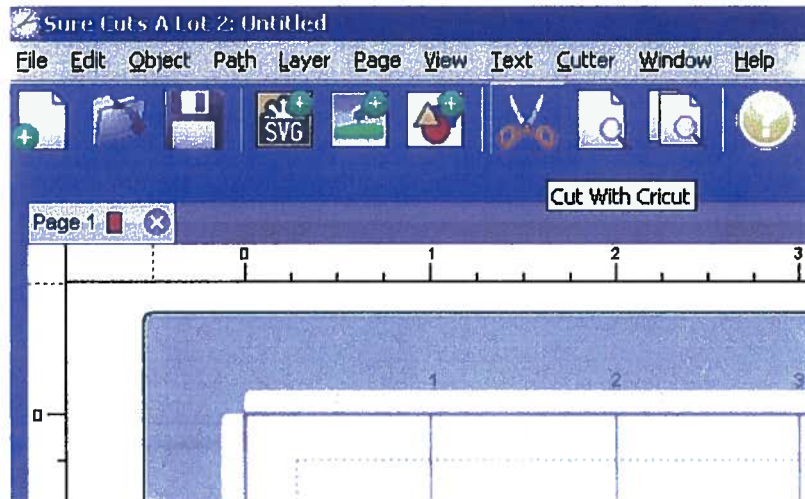
10 encryption methods in order to create its own product, SCAL.
11

12 38. SCAL is a computer software application that provides a computer interface that allows
13 people to cut virtually any shape that they can create or obtain from any other source, using a
14 CRICUT® e-cutter, all without purchasing Provo Craft's CRICUT DESIGNSTUDIO® software
15 or CRICUT® cartridges. According to Defendant Craft Edge, SCAL works with the original and
16 current models of CRICUT® Personal, CRICUT® Expression, CRICUT® Create, and CRICUT®
17 Cake machines.
18

19 39. As with CRICUT DESIGNSTUDIO®, people can buy SCAL and load it into their
20 personal computer either with a CD-ROM disc or from the internet from Defendant Craft Edge's
21 website (www.craftededge.com/download/download.html). Like CRICUT DESIGNSTUDIO®,
22 SCAL communicates with the CRICUT® e-cutter via USB. As shown in the screenshot below,
23 SCAL instructs users to install the USB driver for their CRICUT® e-cutter.
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40. Once installed, the SCAL interface instructs users to “cut with Cricut[®]”:



CAUSES OF ACTION

COUNT I COPYRIGHT INFRINGEMENT

41. Provo Craft repeats and re-alleges herein each of the foregoing paragraphs.

42. Provo Craft owns all copyrights in a number of CRICUT® - related works, including the computer programs that comprise the CRICUT DESIGNSTUDIO® software, the firmware for

1 CRICUT® e-cutters, and the computer software and content on each CRICUT® cartridge. Provo
2 Craft has a number of related copyright registrations in the U.S. Copyright Office for many of
3 these works, including: federal copyright registration number TXu001588137 (attached hereto as
4 Ex. B) and federal copyright registration number TXu001586115 (attached hereto as Ex. C).

5 43. Defendants, without Provo Craft's permission, authorization or consent, have committed
6 copyright infringement by, among other things, accessing, using, copying, and/or making
7 derivative works of, at least portions of these computer programs.

8 44. In particular, upon information and belief, Defendants committed copyright infringement
9 at least by loading (*e.g.*, copying) CRICUT DESIGNSTUDIO® into a computer's random access
10 memory ("RAM") and decompiling, disassembling, reverse-engineering, and/or otherwise
11 displaying the software in human-readable form in violation of the EULA to which Defendants
12 were expressly bound. Such copying was beyond the scope of the license and therefore an
13 infringement.

14 45. Defendants engaged in this unauthorized copying repeatedly over the years each time
15 Provo Craft released updates to CRICUT DESIGNSTUDIO®.

16 46. Defendants' infringement has been willful, intentional, and purposeful, in disregard of and
17 indifferent to Provo Craft's rights.

18 47. Defendants' conduct constitutes a violation of 17 U.S.C. § 101 et seq., and especially §
19 501 et seq.

20 48. As a direct and proximate result of Defendants' copyright infringements, Provo Craft has
21 suffered actual and irreparable injury for which no adequate remedy exists at law. Unless
22 restrained and enjoined, Defendants will continue to engage in the acts complained of herein and,
23 therefore, will continue to cause irreparable harm to Provo Craft.
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49. As the result of Defendants' copyright infringements, Provo Craft is entitled to the maximum statutory damages pursuant to 17 U.S.C. § 504(c), including enhanced damages for willful infringement under 17 U.S.C. § 504(c)(2). Alternatively, at Provo Craft's election, pursuant to 17 U.S.C. § 504(b), Provo Craft is entitled to its actual damages plus Defendants' profits from infringement, as will be proven at trial.



50. Provo Craft is entitled to its costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

COUNT II
TRADEMARK INFRINGEMENT UNDER § 32 OF THE LANHAM ACT

51. Provo Craft repeats and re-alleges herein each of the foregoing paragraphs.

52. Provo Craft is the owner of federal trademark registrations and applications for the mark CRICUT in various forms covering a variety of goods, including valid and subsisting registrations on the Principal Register in the U.S. Patent and Trademark Office for the word marks CRICUT®, CRICUT CREATE®, CRICUT EXPRESSION®, CRICUT CAKE® and CRICUT DESIGNSTUDIO®, as well as the composite word and design mark CRICUT & DESIGN®. Summary information concerning registrations for these mark is set forth in the table below and copies of the corresponding registration certificates are attached to this Complaint as Exhibit D. All of the registrations on Exhibit D are valid and subsisting. They constitute in all instances *prima facie* evidence, and for those registrations that are incontestable, conclusive evidence, of Provo Craft's exclusive rights to use these marks in connection with the goods recited in the registrations throughout the U.S.

Mark	Reg. No.	Reg. Date	Goods Description
CRICUT & Design	3,406,679	04/01/2008	IC 7 - paper cutting machine for cutting paper, cardstock and other paper materials in sheet form

Mark	Reg. No.	Reg. Date	Goods Description
			
CRICUT & Design 	3,372,457	01/22/2008	IC 9 - Computer software recorded on cartridges containing fonts, images or designs for use in operating electronic cutting machines for cutting paper and other materials in sheet form
CRICUT	3,326,119	10/30/2007	IC 7 - Paper cutting machine for cutting paper, cardstock and other materials in sheet form IC 9 - Electronic memories contained in a cartridge to be inserted in an electronic paper cutting machine
CRICUT CREATE	3,541,570	12/02/2008	IC 7 - Paper cutting machine for cutting paper, cardstock and other materials in sheet form
CRICUT EXPRESSION	3,572,075	02/10/2009	IC 7 - Cutting machine for cutting paper, cardstock and other paper or plastic materials in sheet form
CRICUT DESIGNSTUDIO	3,579,471	02/24/2009	IC 9 - Computer software recorded on CD Rom and in downloadable format for use in operating electronic cutting machines for cutting paper and other materials in sheet form
CRICUT CAKE	3,881,505	11/23/2010	IC 7 - electronic cutting machines for cutting gum paste, fondant and other confectionery or pastry materials in flat form; blades for electronic cutting machines IC 9 - Computer software recorded on cartridges containing fonts and graphics for use in operating electronic cutting machines for

Mark	Reg. No.	Reg. Date	Goods Description
			cutting gum paste, fondant and other confectionery or pastry materials in flat form
			IC 21 - Plastic mats for cutting food; Utensils for working with confectionery or pastry materials, namely, spatulas, rollers, pastry cutters, pastry brushes, pastry smoothers, picks for removing cut confectionery or pastry pieces
			IC 30 - Confectionery, namely, gum pastes, fondants and frostings, and mixes therefor

The foregoing marks and the registrations therefor shall be referred to as the "CRICUT® Marks."

53. Provo Craft has extensively and continuously sold, marketed, advertised, and promoted its e-cutter machines, cartridge, software, and related goods using its CRICUT® Marks, and the same have become widely and favorably known throughout the United States. Indeed, the CRICUT® Marks are famous, and are a most valuable asset of Provo Craft, symbolizing its goodwill among consumers and the trade and are exclusively associated with Provo Craft.

54. Defendants have been using one or more of Provo Craft's CRICUT® Marks in commerce in connection with identical and related goods and services.

55. Defendants use the CRICUT® Marks in advertising and promoting their website and in advertising, promoting, and selling their SCAL software, all without permission from Provo Craft.

56. Defendants also use the CRICUT® Marks within the SCAL software, again without permission from Provo Craft.

57. Defendants' unauthorized uses of the CRICUT® Marks is likely to cause confusion, mistake, or deception as to the source or origin of Defendants' goods and services, and are likely

1 to falsely suggest a sponsorship, connection, license, or association of Defendants' goods and
2 services with Provo Craft, and thus constitute trademark infringement of Provo Craft's federally
3 registered marks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

4 58. Defendants' conduct has at all times relevant to this action been willful and/or knowing.

5 59. As a direct and proximate result of Defendants' conduct, Provo Craft has been damaged
6 and will continue to be damaged.

7 60. Provo Craft has no adequate remedy at law.

8
9 **COUNT III**
10 **TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, PASSING OFF**
11 **AND UNFAIR COMPETITION UNDER § 43(A) OF THE LANHAM ACT**

12 61. Provo Craft repeats and re-alleges herein each of the foregoing paragraphs.

13 62. Defendants' use of Provo Craft's CRICUT® Marks is likely to cause confusion, mistake,
14 or deception as to the origin, sponsorship, or approval of Defendants' goods and services and
15 commercial activities, and thus constitutes trademark infringement, false designation of origin,
16 passing off, and unfair competition with respect to the CRICUT® Marks in violation of Section
17 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1).

18 63. Defendants' conduct has at all times relevant to this action been willful and/or knowing.

19 64. As a direct and proximate cause of Defendants' conduct, Provo Craft has been damaged
20 and will continue to be damaged.

21 65. Provo Craft has no adequate remedy at law.

22
23 **COUNT IV**
24 **BREACH OF CONTRACT**

25 66. Provo Craft repeats and re-alleges herein each of the foregoing paragraphs.

26 67. Upon information and belief, Defendants or someone acting upon Defendants' behalf
27 obtained CRICUT DESIGNSTUDIO® after it was first released in November 2007 and thereafter
28 when it was updated and released in new versions.

1 68. On each occasion that Defendants obtained CRICUT DESIGNSTUDIO®, they did so for
2 the purpose of analyzing CRICUT DESIGNSTUDIO® and related materials, making improper
3 use of Provo Craft's intellectual property embodied therein, and creating a competing product that
4 is now known, marketed, and sold as Sure Cuts A Lot or SCAL.

5 69. Shortly after the releases of the first and second versions of CRICUT DESIGNSTUDIO®,
6 Defendants released first and second versions of SCAL.

7 70. Upon information and belief, Defendants were prompted to read the EULA before using
8 the CRICUT DESIGNSTUDIO® software package and agreed to be bound by its terms. (Ex. A).

9 71. Provo Craft (and Provo Craft's predecessor-in-interest, Cognitive Devices, Inc.) fulfilled
10 all of its obligations under the EULA by supplying CRICUT DESIGNSTUDIO® to Defendants.

11 72. Defendants breached the EULA by using the software in ways that were expressly
12 forbidden by the EULA, for example by decompiling, disassembling, reverse-engineering, and/or
13 otherwise displaying the software in human-readable form. (Ex. A at ¶ 2).

14 73. The purpose of Defendants' conduct was to introduce a parasitical competing product in
15 the marketplace, one that was made possible by Defendants' unlawful access to and use of Provo
16 Craft's confidential and copyright-protected computer programs and related intellectual property.

17 74. In addition, Defendants intentionally lured customers away by advertising that customers
18 would not need to buy CRICUT® cartridges if they bought SCAL instead of CRICUT
19 DESIGNSTUDIO®.

20 75. Defendants' conduct was willful, intentional, and purposeful, in disregard of and
21 indifferent to Provo Craft's rights.

22 76. Provo Craft has suffered damages legally caused by Defendants' breach, including
23 monetary damages representing lost sales of Provo Craft's CRICUT DESIGNSTUDIO® software
24 package and CRICUT® cartridges.

1 77. In addition, as a result of Defendants' breach, Provo Craft has suffered loss of sales,
2 customers and goodwill for which there is no adequate remedy at law.

3 78. Provo Craft has been irreparably harmed by Defendants' breach because there is no
4 adequate legal remedy to compensate Provo Craft for the loss of customers and goodwill caused
5 by Defendants' unlawful conduct.
6

7 **PRAYER FOR RELIEF**

8 Accordingly, Provo Craft prays that this Court enter a judgment in its favor and against
9 the Defendants by ordering:

10 a) That Defendants have infringed Provo Craft's copyrights, and such infringement
11 was intentional and willful;

12 b) That Defendants have infringed Provo Craft's CRICUT® Marks, and such
13 infringement was intentional and willful;

14 c) That Defendants have engaged in false designation of origin, passing off, and
15 unfair competition, and such conduct was intentional and willful;

16 d) That Defendants breached the EULA, and such breach was intentional and willful;

17 e) That therefore Defendants, and Defendants' employees, agents, officers, directors,
18 shareholders, members, subsidiaries, related companies, affiliates, distributors, dealers, and
19 all persons in active concert or participation with any of them, are preliminarily and
20 permanently enjoined from infringing Provo Craft's copyrights, or contributing to or
21 inducing infringement by others;
22

23 f) That therefore Defendants, and Defendants' employees, agents, officers, directors,
24 shareholders, members, subsidiaries, related companies, affiliates, distributors, dealers, and
25 all persons in active concert or participation with any of them, are preliminarily and
26 permanently enjoined from infringing Provo Craft's CRICUT® Marks;
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1 g) That therefore Defendants, and Defendants' employees, agents, officers, directors,
2 shareholders, members, subsidiaries, related companies, affiliates, distributors, dealers, and
3 all persons in active concert or participation with any of them, are preliminarily and
4 permanently enjoined engaging in further false designation of origin, passing off, and
5 unfair competition;

6 h) That therefore Defendants pay Provo Craft damages to compensate for the injuries
7 they caused, together with any applicable interest;

8 i) That therefore Defendants pay Provo Craft statutory damages as provided under the
9 Copyright Act;

10 j) That therefore Defendants pay Provo Craft's costs, expenses and attorney fees as
11 provided under the Copyright Act;

12 k) That therefore Defendants pay compensatory damages suffered by Provo Craft as a
13 result of the foregoing acts of infringement, trebled in accordance with 15 U.S.C. § 1117.

14 l) That therefore Defendants pay Provo Craft enhanced damages for willful and
15 intentional infringement;

16 m) That therefore Defendants pays Provo Craft's costs, expenses and attorney fees as
17 provided under the Lanham Act;

18 n) That therefore Defendants pay compensatory damages suffered by Provo Craft as a
19 result of the foregoing acts of infringement, false designation of origin, passing off, and
20 unfair competition, trebled in accordance with 15 U.S.C. § 1117;

21 o) That therefore Defendants, and Defendants' employees, agents, officers, directors,
22 shareholders, members, subsidiaries, related companies, affiliates, distributors, dealers, and
23 all persons in active concert or participation with any of them, are preliminarily and
24

1 permanently enjoined from selling SCAL or any other product that resulted from
2 Defendants' copyright infringement or breach;

3 p) That therefore Defendants pay Provo Craft all other money to which Provo Craft
4 may be entitled by law and equity; and

5 q) Other relief as the Court may deem appropriate.
6

7
8 Respectfully submitted,

9 Dated: January 20, 2011

10 By: 

11 Sheppard Mullin Richter & Hampton LLP
12 Nathaniel Bruno (Cal. Bar No. 228118)

13 Honigman Miller Schwartz and Cohn LLP
14 Andrew M. Grove (*pro hac vice* to be filed)
15 Emily J. Zelenock (*pro hac vice* to be filed)

16 Attorneys for Plaintiff
17 PROVO CRAFT AND NOVELTY, INC.
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DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), Plaintiff Provo Craft and Novelty, Inc. hereby demands a jury trial on all issues triable of right by a jury.

Respectfully submitted,

Dated: January 20, 2011

By: 

Sheppard Mullin Richter & Hampton LLP
Nathaniel Bruno (Cal. Bar No. 228118)

Honigman Miller Schwartz and Cohn LLP
Andrew M. Grove (*pro hac vice* to be filed)
Emily J. Zelenock (*pro hac vice* to be filed)

Attorneys for Plaintiff
PROVO CRAFT AND NOVELTY, INC.

EXHIBIT A

END USER LICENSE AGREEMENT

IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT (THE "AGREEMENT") CAREFULLY BEFORE OPENING THE ACCOMPANYING SOFTWARE (THE "SOFTWARE") PACKAGE OR CONTINUING WITH THE INSTALLATION PROCESS OF THE SOFTWARE. BY CLICKING ON THE "OK" OR "ACCEPT" BUTTON, OR BY OPENING THE SOFTWARE PACKAGE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, CLICK THE "DO NOT ACCEPT" BUTTON TO TERMINATE THE INSTALLATION PROCESS OR PROMPTLY RETURN THE UNOPENED PACKAGE AND THE REST OF THE PRODUCT TO YOUR SUPPLIER FOR A FULL REFUND.

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10. **Governing Law; Venue.** This Agreement shall be interpreted under and governed by the laws of the State of California, without regard to its rules governing the conflict of laws. Any dispute arising under or relating to this Agreement shall be submitted to the exclusive jurisdiction of the state and federal courts located in San Francisco, California, and the parties hereby irrevocably submit to the jurisdiction of such courts and waive all objections to such venue.
11. **Attorneys' Fees.** In the event an action is filed to enforce this Agreement or for breach of this Agreement, the prevailing party shall be entitled to recover all the costs of such action, including reasonable attorneys' fees, whether before, during, or after trial, or on appeal, or in bankruptcy or arbitration proceedings.
12. **Severability.** If any provision of this Agreement is held illegal or unenforceable by a court or tribunal of competent jurisdiction, the remaining provisions of this Agreement shall remain in effect and the invalid provision deemed modified to the least degree necessary to remedy such invalidity.
13. **Assignment.** You may not transfer or assign this Agreement for any reason without the prior written consent of Cognitive Devices.
14. **Entire Agreement.** This Agreement is the complete agreement between Cognitive Devices and you and supersedes all prior agreements, oral or written, with respect to the subject matter hereof.

If you have any questions concerning this Agreement, you may write to Cognitive Devices, 68 Maywood Way, San Rafael, California 94901.

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EXHIBIT B

Type of Work: Text

Registration Number / Date:
TXu001588137 / 2008-09-19

Application Title: Cricut Design Studio September 2008.

Title: Cricut Design Studio September 2008.

Description: Print material.

Copyright Claimant:
Provo Craft and Novelty, Inc., Transfer: Written agreement.

Date of Creation: 2008

Authorship on Application:
Cognitive Devices, Inc., employer for hire; Domicile:
United States. Authorship: computer program.
Dan Benjamin Lyke, 1968- ; Citizenship: United States.
Authorship: Software code consisting of updates,
revisions and bug fixes.

Alternative Title on Application:
Cricut Design Studio

Pre-existing Material:
Software code expressing a soft shadow behind the Cricut
Design Studio splash screen during loading.

Basis of Claim: Revisions and additions throughout.

Rights and Permissions:
General Counsel, Provo Craft and Novelty, Inc., 151 E. 3450
North, Spanish Fork, UT, 84660, United States,
generalcounsel@provocraft.com

Copyright Note: C.O. correspondence.
Regarding deposit: Special Relief granted under 202.20(d)
of C.O. regulations.

Names: Lyke, Dan Benjamin
Cognitive Devices, Inc.
Provo Craft and Novelty, Inc.

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EXHIBIT C

Type of Work: Computer File

Registration Number / Date:
TXu001586115 / 2008-09-23

Application Title: Cricut Design Studio USB application September 2008.

Title: Cricut Design Studio USB application September 2008.

Description: Print material.

Copyright Claimant:
Provo Craft and Novelty, Inc., Transfer: Written agreement.

Date of Creation: 2008

Authorship on Application:
Cognitive Devices, Inc., employer for hire; Domicile:
United States. Authorship: computer program.
Dan Benjamin Lyke, 1968- ; Citizenship: United States.
Authorship: Software code consisting of updates,
revisions and bug fixes.

Rights and Permissions:
General Counsel, Provo Craft and Novelty, Inc., 151 E. 3450
North, Spanish Fork, UT, 84660, United States,
generalcounsel@provocraft.com

Copyright Note: C.O. correspondence.
Regarding deposit: Special Relief granted under 202.20(d)
of C.O. regulations.

Names: Lyke, Dan Benjamin
Cognitive Devices, Inc.
Provo Craft and Novelty, Inc.

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EXHIBIT D

Int. Cl.: 7

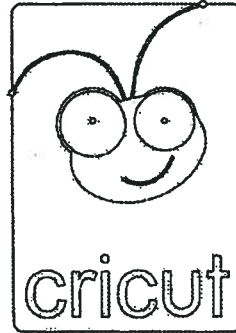
Prior U.S. Cls.: 13, 19, 21, 23, 31, 34, and 35

Reg. No. 3,406,679

United States Patent and Trademark Office

Registered Apr. 1, 2008

**TRADEMARK
PRINCIPAL REGISTER**



PROVO CRAFT AND NOVELTY, INC. (UTAH
CORPORATION)
151 EAST 3450 NORTH
SPANISH FORK, UT 84660

FIRST USE 10-0-2005; IN COMMERCE 4-11-2006.

SN 78-618,223, FILED 4-27-2005.

FOR: PAPER CUTTING MACHINE FOR CUT-
TING PAPER, CARDSTOCK AND OTHER PAPER
MATERIALS IN SHEET FORM, IN CLASS 7 (U.S.
CLS. 13, 19, 21, 23, 31, 34 AND 35).

BONNIE LUKEN, EXAMINING ATTORNEY

Int. Cl.: 9

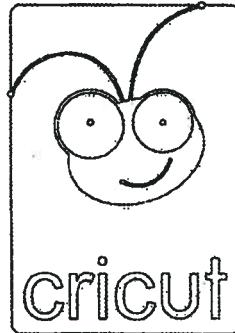
Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,372,457

United States Patent and Trademark Office

Registered Jan. 22, 2008

**TRADEMARK
PRINCIPAL REGISTER**



PROVO CRAFT AND NOVELTY, INC. (UTAH
CORPORATION)
151 EAST 3450 NORTH
SPANISH FORK, UT 84660

FIRST USE 12-1-2005; IN COMMERCE 12-1-2005.

THE MARK CONSISTS OF CRICUT AND DE-
SIGN.

FOR: COMPUTER SOFTWARE RECORDED ON
CARTRIDGES CONTAINING FONTS, IMAGES OR
DESIGNS FOR USE IN OPERATING ELECTRONIC
CUTTING MACHINES FOR CUTTING PAPER AND
OTHER MATERIALS IN SHEET FORM, IN CLASS 9
(U.S. CLS. 21, 23, 26, 36 AND 38).

SER. NO. 77-185,997, FILED 5-21-2007.

JASON TURNER, EXAMINING ATTORNEY

Int. Cls.: 7 and 9

Prior U.S. Cls.: 13, 19, 21, 23, 26, 31, 34, 35, 36, and 38

Reg. No. 3,326,119

United States Patent and Trademark Office

Registered Oct. 30, 2007

**TRADEMARK
PRINCIPAL REGISTER**

CRICUT

PROVO CRAFT AND NOVELTY, INC. (UTAH
CORPORATION)
151 EAST 3450 NORTH
SPANISH FORK, UT 84660

FOR: PAPER CUTTING MACHINE FOR CUT-
TING PAPER, CARDSTOCK AND OTHER MATE-
RIALS IN SHEET FORM, IN CLASS 7 (U.S. CLS. 13,
19, 21, 23, 31, 34 AND 35).

FIRST USE 4-11-2006; IN COMMERCE 4-17-2006.

FOR: ELECTRONIC MEMORIES CONTAINED IN
A CARTRIDGE TO BE INSERTED IN AN ELEC-

TRONIC PAPER CUTTING MACHINE, IN CLASS 9
(U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 12-1-2005; IN COMMERCE 12-1-2005.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SN 78-618,210, FILED 4-27-2005.

DAWN HAN, EXAMINING ATTORNEY

Int. Cl.: 7

Prior U.S. Cls.: 13, 19, 21, 23, 31, 34, and 35

Reg. No. 3,541,570

United States Patent and Trademark Office

Registered Dec. 2, 2008

**TRADEMARK
PRINCIPAL REGISTER**

CRICUT CREATE

PROVO CRAFT AND NOVELTY, INC. (UTAH
CORPORATION)
151 EAST 3450 NORTH
SPANISH FORK, UT 84660

FOR: PAPER CUTTING MACHINE FOR CUT-
TING PAPER, CARDSTOCK AND OTHER MATE-
RIALS IN SHEET FORM, IN CLASS 7 (U.S. CLS. 13,
19, 21, 23, 31, 34 AND 35).

FIRST USE 2-22-2008; IN COMMERCE 6-24-2008.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,326,119 AND
3,326,120.

SN 77-377,629, FILED 1-22-2008.

KIMBERLY PERRY, EXAMINING ATTORNEY

Int. CL.: 7

Prior U.S. Cls.: 13, 19, 21, 23, 31, 34 and 35

Reg. No. 3,572,075

United States Patent and Trademark Office

Registered Feb. 10, 2009

**TRADEMARK
PRINCIPAL REGISTER**

CRICUT EXPRESSION

PROVO CRAFT AND NOVELTY, INC. (UTAH
CORPORATION)
151 E. 3450 NORTH
SPANISH FORK, UT 84660

FOR: CUTTING MACHINE FOR CUTTING PA-
PER, CARDSTOCK AND OTHER PAPER OR PLAS-
TIC MATERIALS IN SHEET FORM, IN CLASS 7 (U.S.
CLS. 13, 19, 21, 23, 31, 34 AND 35).

FIRST USE 1-4-2007; IN COMMERCE 5-10-2007.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,326,119, 3,406,679,
AND 3,432,262.

SER. NO. 77-506,667, FILED 6-24-2008.

ELLEN PERKINS, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 3,579,471

United States Patent and Trademark Office

Registered Feb. 24, 2009

**TRADEMARK
PRINCIPAL REGISTER**

CRICUT DESIGNSTUDIO

**PROVO CRAFT AND NOVELTY, INC. (UTAH
CORPORATION)**

151 E. 3450 NORTH

SPANISH FORK, UT 84660

**FOR: COMPUTER SOFTWARE RECORDED ON
CD ROM AND IN DOWNLOADABLE FORMAT
FOR USE IN OPERATING ELECTRONIC CUTTING
MACHINES FOR CUTTING PAPER AND OTHER
MATERIALS IN SHEET FORM , IN CLASS 9 (U.S.
CLS. 21, 23, 26, 36 AND 38).**

FIRST USE 11-28-2007; IN COMMERCE 11-29-2007.

**THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.**

**OWNER OF U.S. REG. NOS. 3,326,119, 3,406,679,
AND 3,432,262.**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "DESIGN STUDIO", APART FROM
THE MARK AS SHOWN.**

SER. NO. 77-506,658, FILED 6-24-2008.

ELLEN PERKINS, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

CRICUT CAKE

Reg. No. 3,881,505

Registered Nov. 23, 2010

Int. Cls.: 7, 9, 21, and 30

TRADEMARK

PRINCIPAL REGISTER

PROVO CRAFT AND NOVELTY, INC. (UTAH CORPORATION)
10876 SOUTH RIVER FRONT PARKWAY
SUITE 600
SOUTH JORDAN, UT 84095

FOR: ELECTRONIC CUTTING MACHINES FOR CUTTING GUM PASTE, FONDANT AND OTHER CONFECTIONERY OR PASTRY MATERIALS IN FLAT FORM; BLADES FOR ELECTRONIC CUTTING MACHINES, IN CLASS 7 (U.S. CLS. 13, 19, 21, 23, 31, 34 AND 35).

FIRST USE 1-22-2010; IN COMMERCE 2-1-2010.

FOR: COMPUTER SOFTWARE RECORDED ON CARTRIDGES CONTAINING FONTS AND GRAPHICS FOR USE IN OPERATING ELECTRONIC CUTTING MACHINES FOR CUTTING GUM PASTE, FONDANT AND OTHER CONFECTIONERY OR PASTRY MATERIALS IN FLAT FORM, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-22-2010; IN COMMERCE 2-1-2010.

FOR: PLASTIC MATS FOR CUTTING FOOD; UTENSILS FOR WORKING WITH CONFECTIONERY OR PASTRY MATERIALS, NAMELY, SPATULAS, ROLLERS, PASTRY CUTTERS, PASTRY BRUSHES, PASTRY SMOOTHERS, PICKS FOR REMOVING CUT CONFECTIONERY OR PASTRY PIECES, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 1-22-2010; IN COMMERCE 2-1-2010.

FOR: CONFECTIONERY, NAMELY, GUM PASTES, FONDANTS AND FROSTINGS, AND MIXES THEREFOR, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-22-2010; IN COMMERCE 2-1-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,326,119, 3,406,679, AND OTHERS.

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SN 77-915,458, FILED 1-20-2010.

KATHLEEN LORENZO, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office